

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Eighteenth Region

MESABI PUBLISHING COMPANY¹

Employer

and

UNITED STEELWORKERS, AFL-CIO, CLC

Petitioner

Case 18-RC-17574

DECISION AND DIRECTION OF ELECTION

Petitioner seeks to represent a unit of full-time and regular part-time employees performing office and clerical duties related to the *Mesabi Daily News*, a newspaper published at the Employer's Virginia, Minnesota facility. While the Employer stipulated that the unit sought by Petitioner is appropriate, the Employer contends that one employee – Kim Huewe – should be excluded from the unit because Huewe is not employed by the Employer or, in the alternative, because Huewe is a supervisor within the meaning of the Act. Based on the record and relevant Board cases, I find that Kim Huewe is an employee of the Employer, is not a supervisor, and should be included in the unit.

¹ The Employer and Petitioner signed a stipulation (Board Exhibit 2) that the correct name of the Employer is Mesabi Daily News. However, the Employer then stated on the record that the correct name of the Employer is Mesabi Publishing Company. In view of the fact that the Employer's representation on the record appears to correct the stipulation, I conclude that the Employer's correct name is Mesabi Publishing Company.

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Upon the entire record in this proceeding, I find:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.²
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The first part of this decision is a review of the corporate structure, business and supervisory hierarchy of the Employer. The second section is a review of the Employer's claim that Kim Huewe is not an employee of the Employer. The third section is a review of the job performed by Huewe, including evidence regarding Huewe's alleged supervisory authority. Fourth, I explain my conclusion that Huewe is an employee of the Employer. In the final section, I apply Board law to explain the basis for my conclusion that Kim Huewe is not a supervisor within the meaning of the Act.

² The Employer, Mesabi Publishing Company, is owned and operated by American Consolidated Media, located in Dallas, Texas. American Consolidated Media is owned by Macquarie Media, an Australian company. The Employer, located in Virginia, Minnesota, is engaged in the publishing of a newspaper. During the past calendar year, a representative period, the Employer derived gross revenues in excess of \$200,000, and purchased and received at its Virginia, Minnesota facility goods valued in excess of \$50,000 directly from points located outside the State of Minnesota.

Corporate Structure, Business and Supervisory Hierarchy

American Consolidated Media, which is located in Dallas, Texas, owns Superior Publishing Corporation. Superior Publishing Corporation owns and operates 14 newspapers in the Upper Midwest. One of the 14 newspapers is the Employer.

Heading the Employer's operations are three co-publishers. They are Editor Bill Hanna, Administrator Shelly Lindberg, and Advertising Director Chris Knight. Also managing the Employer's operation is Larry Rodgers, whose title is circulation manager. According to Lindberg's testimony, she reports directly to Charles Johnson, president and chief executive officer of Superior Publishing Corporation.

The Employer publishes the *Mesabi Daily News*, a newspaper published seven days a week. The Employer employs about 32 employees, all of whom (except Huewe, according to the Employer) report to Hanna, Lindberg, Knight or Rodgers. Petitioner currently represents a unit consisting of the editorial employees. With regard to the employees who the parties agree are included in the unit, Lindberg supervises all of them except the classified sales representatives, who are supervised by Advertising Director Knight.

The Employer contends that Kim Huewe is supervised by Julie Albright, regional accounting manager, who is not employed by the Employer. Regional Accounting Manager Albright works out of a building housing the *Ashland Daily Press*, a newspaper located in Ashland, Wisconsin. While Albright is located in Ashland, she supervises accounts receivables for all 14 newspapers of Superior Publishing Corporation. She has a staff of seven employees reporting to her, including Kim Huewe. According to

Albright, she (and only she) supervises Huewe. While not stated in the record, I note that Ashland, Wisconsin, where Albright works, is 131 miles from Virginia, Minnesota, where Huewe works.

The Employer's Claim that Kim Huewe is Not an Employee

The Employer contends that Kim Huewe is not in its employ, but rather works for Superior Publishing Corporation. The bases for the Employer's claim appear to be that Huewe is located in Virginia, Minnesota, only because Huewe prefers to work in that location; that Huewe performs work for more than the Employer, and that Huewe is supervised by Albright.

First, the record is clear that until two years ago, Huewe worked at the Superior Publishing Corporation's Hibbing, Minnesota location, performing the same job duties she currently performs. Moreover, the record is clear that when Huewe moved from the Hibbing location to the Virginia location, it was to accommodate Huewe. That is, according to even Huewe, she had found another job and had given notice to the Employer that she intended to quit, in part because she could no longer afford the gas to drive from her home to Hibbing, Minnesota. In order to keep Huewe in its employ, the Employer agreed that Huewe could work out of the Virginia, Minnesota facility, which is closer to Huewe's home.

Second, Huewe performs work for more than just the Employer. According to Regional Accounting Manager Albright and Huewe, Huewe's accounts receivables work involves not just the Employer, but also newspapers owned by Superior Publishing Corporation in Walker and Grand Marais, Minnesota.

Finally, Julie Albright contends that she alone supervises Huewe, and that no one connected with the Employer is to supervise Huewe. Albright further contends that she made clear to Huewe at the time Huewe moved from Hibbing to Virginia that she could not become an employee of the Employer, that it was important that Huewe remain under Albright's jurisdiction, and that Huewe was not to take orders from Lindberg or Knight.

Albright also testified that she supervises a total of seven employees, five in Ashland, Wisconsin, one in Hibbing, Minnesota, and Huewe. Five of the seven are in accounts receivables. Finally, Albright testified that in her view, Huewe is an employee of Superior Publishing Corporation.

Kim Huewe's Job

Huewe's Duties Related to Accounts Receivable

According to Huewe's un rebutted testimony, most of her work involves the Employer's newspaper because it is published seven days a week. On the other hand, the Walker newspaper is published two days per week and the Grand Marais newspaper is published one day a week. In addition, the record is clear that when the Employer created the billing assistant position (discussed in more detail below), the intent was for the billing assistant to assume responsibility for the Grand Marais newspaper.

Huewe also testified that she is "constantly" interacting with the staff of the Employer in order to determine cash inflow and outflow, to make sure the appropriate customers are billed the correct amounts, to prepare manifests for the next day's paper so that dummy layouts can be prepared, and to complete spreadsheets showing monies

received. Administrator Shelly Lindberg confirmed that Huewe interacts daily with the Employer's receptionist for information regarding deposits and with the Employer's classified advertisement sales representatives regarding customer advertisements. According to Huewe, she "occasionally" interacts with individuals from the other two newspapers, generally by email. Huewe also prepares spreadsheets showing revenues received for the Walker and Grand Marais newspapers.

Huewe is on the payroll of the Employer. She has her own office located in the Employer's facility. Her office is located in the same area as employees stipulated to be in the unit, although those employees (except the billing assistant) do not have their own offices, but instead have desks in areas with other employees. When Huewe was employed at the Hibbing location, her paychecks were from Superior Publishing Corporation.

Huewe's Supervisor

Regional Accounting Manager Albright adamantly testified that she alone is Huewe's supervisor. Administrator Julie Lindberg was less adamant, although she too testified that Huewe reports directly to Albright. Albright also testified that she is in almost daily contact (by telephone or email) with Huewe, although the two have had person-to-person interactions (not otherwise described) 8-10 times in the last two years. It is also clear that Huewe submits some reports to Albright on a weekly or monthly basis, which are forwarded by Albright to corporate headquarters.

None of the specific testimony regarding Huewe's interactions with Administrator Lindberg, Advertising Director Knight or Regional Accounting Manager Albright supports the general testimony that Huewe reports solely to Albright. On the contrary, Huewe

testified without contradiction that she asks Knight for time off and then confirms with Lindberg that she is taking time off (not involving Albright at all); that she has asked for raises from Lindberg and Knight (apparently not involving Albright at all when making the request); and that she views Lindberg, Knight and Editor Bill Hanna as her supervisors. More importantly, both Lindberg and Huewe provided detailed accounts with regard to their roles in deciding to hire an assistant for Huewe, with regard to problems with one of the hires, and with regard to developing the job of the assistant. These accounts make clear that, at a minimum, Lindberg and Knight actively supervise Huewe. In fact, both appear to be far more involved in Huewe's supervision than is Albright. Those detailed accounts are discussed in the next section regarding Huewe's alleged supervisory status.

Huewe's Alleged Supervisory Status

Huewe does not hire or fire employees on her own. She cannot grant pay raises, suspend, promote or transfer employees, lay off or recall employees. There is no evidence that she has adjusted employee grievances. While the Employer contends that Huewe can discipline employees, she has never done so.

Testimony supporting the Employer's contention that Huewe is a supervisor was provided by Regional Accounting Manager Albright. She testified that Huewe supervises one person (the billing assistant), including deciding what work the employee does, prioritizing that employee's work, evaluating that employee, setting that employee's hours of work, approving overtime, and recommending the hiring and firing of the employee. Albright testified that she and Huewe jointly decide whom to hire and fire for the one position Huewe supervises. Thus, for example, Albright testified that she

asks Huewe, "So what do you think of this person. Shelly said she thinks they are going to be pretty qualified and what do you think?" According to Albright, Huewe then lets Albright know Huewe's own thoughts. Moreover, if Huewe felt the person should be fired, "that's the decision we would make." However, Albright conceded that she has never participated in an interview with Huewe and she has no idea what conversations Huewe and Lindgren have had regarding any employees.

Albright's general testimony is not supported by either Huewe or Lindberg. Huewe testified that she was working many, many hours and needed help. As a result, Huewe suggested to Administrator Lindberg and Advertising Director Knight that Gail Johnston be moved from a classified sales job to the front office to (in part) assist Huewe. Huewe knew that Johnston did not like selling and was "burned out" with regard to her job, but did like paperwork. Lindberg confirmed Huewe's testimony, and further explained that she and others fought hard on Johnston's behalf to sell the idea to corporate headquarters, and even to Regional Accounting Manager Albright. In fact, both Huewe and Albright testified that Johnston was hired over Albright's objection (Albright did not believe that Johnston was qualified for the job). Thus, before Johnston was hired, there was no application process; no one else was considered for the position; and no job was posted or advertised as open. Johnston's job title was billing assistant.

Johnston did not work out and was terminated at the end of her probationary period, which was 90 days in length. According to Administrator Lindberg, there were ongoing meetings among Huewe, Advertising Director Knight and herself regarding Johnston's performance. Johnston's problems included mistakes, not finishing tasks on

time, and not learning the job. Lindberg also testified that Huewe “provided Chris and I the information to have those discussions” because Huewe was the person working with Johnston, so she had the most knowledge about Johnston’s performance. Finally, Lindberg stated, “. . . we do have a number of written coaching conversations in Gail’s file that would say, ‘Kim said this at the meeting’...” Huewe further testified that she learned of Johnston’s mistakes from employees at the Grand Marais, Minnesota location, from Regional Accounting Manager Albright and from her own observation, as it was Huewe’s job to train Johnston.

Following Johnston’s termination, the Employer advertised for a billing assistant. According to Huewe, she drafted the advertisement describing the job, which Administrator Lindberg substantially modified. The advertisement directed applicants to send letters of interest to Lindberg. Huewe testified that the Employer received four applications. Huewe asked Lindberg to interview one of the applicants (Huewe’s neighbor) just to get the neighbor off Huewe’s back. Both Lindberg and Huewe sat in on that interview. Another applicant was interviewed by only Lindberg and Advertising Director Knight. A couple of days later the applicant met with Huewe, who showed the applicant the office, how Huewe performed one aspect of her job, and where the applicant would be sitting. After Huewe brought the second applicant to Knight’s office, Huewe left when the discussion turned to wages. Ultimately, the second applicant was not hired, apparently due to the applicant’s dissatisfaction regarding wages.

All three (Lindberg, Knight and Huewe) interviewed the remaining two applicants. All three liked Bonnie Altobelli and she was hired. Lindberg confirmed this testimony, but added Huewe made the “final recommendation,” in response to a leading question.

Huewe, Lindberg & Albright all agree that Huewe is responsible for training Altobelli. In this regard, Huewe is training Altobelli on all aspects of the job involving the Grand Marais, Minnesota paper, so that Huewe no longer has to be responsible for it. In addition, Huewe hopes to train Altobelli enough about other parts of Huewe's job, so that Huewe can have more opportunity to take time off. In addition, Altobelli acts as the receptionist during the receptionist's breaks or in her absence (which has been frequent due to illness). The receptionist reports directly to Administrator Lindberg, and not to Huewe. Finally, Altobelli performs duties for Circulation Manager Larry Rodgers, which are not described in the record.

Altobelli recently completed her probationary period. According to Huewe's un rebutted testimony, Advertising Manager Knight asked her, "Bonnie okay?" and she responded, "Bonnie is okay," accompanied by a thumbs-up gesture. Huewe also talked to Lindberg about Altobelli and told Lindberg (in response to Lindberg's question) that Altobelli was far better than Gail, and doing a wonderful job. Lindberg confirmed that she did ask Huewe for input regarding Altobelli's work, and that Huewe responded she was working out much better than Johnston. Lindberg testified that the Employer then moved Altobelli off her probationary period.

Lindberg, and not Huewe, advised Altobelli that Altobelli was hired and that she was off probation.

Regional Accounting Manager Albright contends that it was Huewe's decision to terminate Johnston, and that Huewe sets the hours of work for the billing assistant. Huewe testified that she does not schedule the building assistant's hours of work or grant her time off.

Huewe Is an Employee of the Employer

Huewe is paid by the Employer. Huewe's work location is the Employer's facility in Virginia, Minnesota. The Employer agrees that the person with whom Huewe works most closely – the billing assistant – is in the unit. All of these undisputed facts support my conclusion that Huewe is an employee of the Employer.

In addition, while Huewe is theoretically supervised by Regional Accounting Manager Albright, the reality is far different. From Administrator Lindberg's testimony, it is very clear that Huewe looks to Lindberg and not to Albright for day-to-day supervision. It is Lindberg and Advertising Director Knight – and not Albright – who were involved in every aspect of the creation and filling of the billing assistant position. This fact is made abundantly clear from the undisputed evidence that Lindberg, Knight and Huewe succeeded in getting Johnston hired for the billing assistant job, in spite of Albright's objections.

I recognize that some of Huewe's responsibilities involve newspapers other than the *Mesabi Daily News*. However, Huewe's unrebutted testimony suggests that at least 70 percent of her time is spent on issues related to the Employer, as it publishes seven days per week compared to three days total for the other two newspapers. Moreover, her detailed testimony suggests she has daily work-related contact with numerous employees at the Virginia, Minnesota facility, including employees in the unit sought by Petitioner. In contrast, there is no evidence that Huewe has any contact – work-related or otherwise – with the five employees in Ashland or the one employee in Hibbing, who are supervised by Albright.

While neither the Employer nor Petitioner articulates the issue, it appears to me that Huewe is a dual-function employee. That is, she provides office and clerical duties for the Employer, and those office and clerical duties would normally be unit work. Huewe also provides office and clerical functions for newspapers located in Walker and Grand Marais, Minnesota, which is not unit work. However, Huewe performs office and clerical functions for the Employer for sufficient periods of time to demonstrate that she has a substantial interest in working conditions in the unit. *Medlar Electric*, 337 NLRB 796 (2003); *Ansted Center*, 326 NLRB 1208 (1998).

Huewe Is Not a Supervisor Within the Meaning of Section 2(11) of the Act

The Employer has the burden of proving Huewe's supervisory status, as the party alleging that an individual is a supervisor has the burden of proof. *NLRB v. Kentucky River Community Care*, 121 S.Ct. 1861, 1866-1867 (2001). Moreover, any lack of evidence in the record is construed against the party asserting supervisory status. *Elmhurst Extended Care Facilities*, 329 NLRB 535, 536 fn. 8 (1999). Finally, purely conclusionary evidence is not sufficient to establish supervisory status. *Volair Contractors*, 341 NLRB 673, 675 (2004); *Sears, Roebuck & Co.*, 304 NLRB 193, 194 (1991).

Huewe does not hire, fire, promote, transfer, lay off or recall, grant pay increases or adjust employee grievances. While the Employer contends that Huewe can discipline employees, it is significant that the Employer conceded Huewe has not issued discipline, in light of the problems with former Billing Assistant Johnston, and in light of Lindberg's reference to the existence of written coaching discussions in Johnston's file (which are not in evidence). Moreover, while Albright testified that Huewe directs and

assigns work to the billing assistant, her testimony is conclusionary. More importantly, it is clear that Albright has almost no firsthand knowledge of how Huewe functions or what roles Administrator Lindberg and Advertising Director Knight play in overseeing Huewe. There is no other evidence that Huewe assigns or directs work other than Albright's conclusionary testimony.

The key issues are whether Huewe effectively recommends the hiring or firing of employees. In considering these issues, I have not considered any of the general and conclusionary testimony of Regional Accounting Manager Albright, in view of her concession that she has no idea how Lindberg and Knight interact with Huewe.

With regard to recommending the hiring of employees, I reject the Employer's contention that Huewe effectively recommended that Johnston be hired. On the contrary, Huewe suggested Johnston be considered for a newly created position. At the time, no other person was even considered. Moreover, Lindberg was clear that she (and perhaps Huewe - the record is not clear) had to sell Albright and corporate that hiring Johnston was a good idea. I also reject the Employer's contention that Huewe effectively recommended the hire of Altobelli. While Huewe participated in some (but not all) interviews of the four applicants, including Altobelli's interview, she was one of three participants. Her exact role in the interviews is not explained; nor did the Employer ascertain specific evidence regarding her alleged recommendations. In reaching this conclusion, I have taken into account Lindberg's affirmative answer to the leading question whether Huewe had the "final recommendation" with regard to the hiring of Altobelli. *Golden Crest Healthcare Center*, 348 NLRB No. 39 (2006) (purely conclusionary evidence insufficient to establish supervisory status); *Ryder Truck Rental*,

326 NLRB 1386, 1387-1388 fn. 9 (1988) (where admitted supervisor also participates in interview process, it cannot be said employee at issue had authority to effectively recommend hiring). *Los Angeles Water & Power Employees' Assn.*, 340 NLRB 1232, 1234 (2003) (participation in interviews and involvement in discussion regarding whether to recommend a candidate to board insufficient evidence to establish supervisory authority).

Finally, I reject the Employer's contention that Huewe effectively recommended the termination of employee Johnston. Again, Administrator Lindberg's testimony is the most relevant Employer evidence. That testimony makes clear that Huewe's primary role in the decision to terminate Johnston was providing information, because Huewe worked with Johnston and therefore had the most knowledge regarding Johnston's performance. Evaluations of employees made by a more experienced employee on the basis of the more experienced employee's superior knowledge do not establish supervisory status if they do not, by themselves, affect wages or job status. Moreover, it is the Employer's burden to establish a direct link between the trainer's recommendations and management decisions regarding whether to retain probationary employees. *Webco Industries*, 334 NLRB 608, 610 (2001). The Employer not only failed to establish what weight Huewe's recommendations carried in the Employer's decision to not retain Johnston, but also the Employer's most probative evidence suggests Huewe did nothing more than provide information. *Williamette Industries*, 336 NLRB 743 (2001).

The following employees of Mesabi Publishing Company constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time employees performing office and clerical duties, including accounts receivables, employed by the Employer at its Virginia, Minnesota facility; excluding guards and supervisors as defined by the Act, and all other employees.

DIRECTION OF ELECTION

An election by secret ballot will be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date below, and who meet the eligibility formula set forth above. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are persons who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the

election date and who have been permanently replaced.³

Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by **United Steelworkers, AFL-CIO, CLC**.

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 – 14th Street, N.W., Washington, D.C. 20570. **This request must be received by the Board in Washington by 5:00 p.m. (EDT) on May 22, 2007.** The request may be filed through E-Gov on the Board's website, www.nlr.gov,⁴ but may not be filed by facsimile.

Signed at Minneapolis, Minnesota, this 8th day of May, 2008.

/s/ Robert W. Chester

Robert W. Chester, Regional Director
National Labor Relations Board – Region 18
330 South Second Avenue, Suite 790
Minneapolis, MN 55401-2221

³ To ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. Excelsior Underwear Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Co., 394 U.S. 759 (1969). Accordingly, it is directed that two copies of an election eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within seven (7) days of the date of this Decision and Direction of Election. North Macon Health Care Facility, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. In order to be timely filed, this list must be received in the Minneapolis Regional Office, 330 South Second Avenue, Suite 790, Minneapolis, MN 55401-2221, on or before close of business **May 15, 2008**. No extension of time to file this list may be granted by the Regional Director except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

⁴ To file a request for review electronically, go to www.nlr.gov and select the E-Gov tab. Then click on the E-filing link on the menu. When the E-file page opens, go to the heading Board/Office of the Executive Secretary and click the "File Documents" button under that heading. A page then appears describing the E-filing terms. At the bottom of the page, check the box next to the statement indicating that the user has read and accepts the E-File terms and click the "Accept" button. Then complete the filing form with information such as the case name and number, attach the document containing the request for review, and click the "Submit Form" button. Guidance for E-Filing is contained in the attachment supplied with the Regional Office's original correspondence in this matter and is also located under "E-Gov" on the Board's website, www.nlr.gov.